

REMARKS/ARGUMENTS

Favorable reconsideration of this application is respectfully requested.

The present response addresses the outstanding rejections, to complete the filing of the RCE request and Information Disclosure Statement filed November 9, 2005.

The Title is amended as suggested in paragraph 5 of the Office Action.

A new Abstract believed to be more clearly directed to the claimed features is submitted herein.

Claims 33-36 are amended to address the objection noted in paragraph 7 of the Office Action.

Claims 35, 36, and 38-45 are pending in this application. Claims 33, 34, and 37 are canceled by the present response without prejudice. Claims 42-44 were rejected under 35 U.S.C. § 101. Claims 34 and 38-45 were rejected under 35 U.S.C. § 102(e) as anticipated by U.S. patent 6,587,831 to O'Brien. Claims 33 and 35-37 were rejected under 35 U.S.C. § 103(a) as unpatentable over O'Brien.

Addressing first the rejection of Claims 42-44 under 35 U.S.C. § 101, that rejection is traversed by the present response.

First, applicants submit the basis for the outstanding rejection is improper as it sets forth a two-prong test including whether the invention is within the technological arts. As recently held in *In Re Lundgren*, Bd. Pat. App. & Int., No. 2003-2088, Decided October 2005, such a test is improper. For that reason alone the outstanding rejection is improper and must be withdrawn.

Moreover, claims 42-44 are amended by the present response to clearly set forth more statutory subject matter by more clearly reciting a useful, concrete, and tangible result. Claims 42-44 are clearly and not merely directed to an abstract idea as currently written.

Thus, claims 42-44 are believed to be in full compliance with all the requirements under 35 U.S.C. § 101.

Addressing now the rejections to the claims based on O'Brien, those rejections are traversed by the present response.

Initially, applicants note the claims are amended by the present response to clarify features recited therein. The claimed features are believed to clearly distinguish over O'Brien.

Moreover, applicants respectfully submit the outstanding rejection improperly dismisses certain of the claimed features. The outstanding Office Action indicated that certain elements previously recited in claim 34 “represent non-functional descriptive material since it is obvious in light of the prior art and to one skilled in the art that where (in what section, portion, subsystem, routine, code, segment, object, etc.) the plurality of operations/actions are performed by the system or its subsystems (components, sections, code, routines, etc.) does not change the overall functionality of the system”.<sup>1</sup>

The above-noted basis for the outstanding rejection is not at all understood as it does not even positively address the claimed features. That is, to summarily not consider claim features is believed to be clearly improper. The claims never merely set forth non-functional descriptive material, but set forth the communication of specific information. To summarily dismiss such positively recited claim limitations is believed to be clearly improper.

Moreover, as noted in MPEP § 2143,

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of

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<sup>1</sup> Office Action of August 8, 2005, the paragraph bridging pages 6 and 7.

success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.

The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

The outstanding rejection has not properly set forth such a *prima facie* case of obviousness as it has not indicated how the prior art meets *all* the claimed limitations.

Moreover, the presently submitted amendments to the claims are believed to even further distinguish the claims over O'Brien and to even more positively recite features that cannot be ignored.

Moreover, to the extent that the outstanding rejection relied upon positions of Official Notice, applicants traverse that Official Notice and require that prior art be cited for the positions for which Official Notice was taken.

In view of the present response applicants respectfully submit the claims clearly recite features neither taught nor suggested by O'Brien, and that the outstanding rejection has not even properly considered all the positively recited claim features.

Therefore, in view of the foregoing comments applicants respectfully submit the claims as currently written are allowable.

Application No. 09/819,856  
Subsequent to filing of the RCE and in  
Response to Office Action of August 8, 2005

As no other issues are pending in this application, it is respectfully submitted that the present application is now in condition for allowance, and it is hereby respectfully requested that this case be passed to issue.

Respectfully submitted,

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